

REMARKS

In response to the restriction requirement, the applicants provisionally elect to prosecute the claims in Group 2 (Figure 3a), with claims 1-20 being readable thereon. At least claims 1, 10, 16, and 19 are generic. The election is made with traverse.

In particular, the twenty eight way election of species requirement is fatally flawed and must be withdrawn. Applicant respectfully refers the Examiner to MPEP Section 806.04(b), which states “Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related,” then the requirements of MPEP Sections 806.05 through 806.05(i) apply. Moreover, “if restriction is improper under either practice, it should not be required.”

Referring to MPEP Section 806.05, its states “where two or more related inventions are being claimed, the principal question to be determined in connection with a requirement to restrict or rejection on the ground of double patenting is whether or not the inventions as claimed are distinct.” The same section goes on to state that “if they (the inventions) are not distinct, restriction is never proper.”

Reviewing claims 1-20 in the elected Group 2, it simply cannot be said that the claims cover only the embodiment of Figure 3a. Rather, the claims can clearly be read upon each of Figures 1-26. Specifically, Figures 1-26 illustrate different embodiments fairly covered by the recited elements of claims 1-20. Accordingly, the inventions as claimed are not distinct, and thus, there cannot be a proper restriction requirement on the basis made by the Examiner.

Moreover, claims 1-20 plainly are generic, as these claims read on each embodiment of Figures 1-26. There simply is no distinction in these claims between the illustrated embodiments. Thus, the applicants cannot make a meaningful election.

Therefore, the requirement must be withdrawn.

Nevertheless, in order to avoid any extension fees, the applicants provisionally elect to prosecute the species of Group 2, with traverse.

The applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 13-2855, under Order No. 29864/38509 from which the undersigned is authorized to draw.

Dated: September 1, 2004

Respectfully submitted,

By 
Keith R. Jarosik

Registration No.: 47,683
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago, Illinois 60606-6357
(312) 474-6300
Attorney for Applicants